

HARYANA GOVERNMENT

LABOUR DEPARTMENT

Notification

The 2nd December, 1985

No. 9/5/84-6Lab./9775.--In pursuance of the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Faridabad in respect of the dispute between the Workman and the management of M/s Deepak Pneumatics (Pvt.) Ltd., 8 K.M. Mathura Road, Faridabad.

IN THE COURT OF SHRI R.N. SINGAL, PRESIDING OFFICER, LABOUR COURT, FARIDABAD

Reference No. 364 of 1984

Between

SHRI GIARSI LAL, WORKMAN AND THE RESPONDENT MANAGEMENT OF M/S. DEEPAK PNEUMATICS (PVT.) LTD., 8 K.M. MATHURA ROAD, FARIDABAD

Present :--

Shri Manohar Lal for the workman.

Dr. Anand Parkash along with Shri J.S. Saroha for the respondent management.

AWARD

This industrial dispute between the workman Shri Giarsi Lal and the respondent management of M/s. Deepak Pneumatics Pvt. Ltd., 8 K.M. Mathura Road, Faridabad has been referred to this Court by the Hon'ble Governor of Haryana,--vide his order No. ID/FD/144-84/32828-33, dated 30th August, 1984 under Section 10(i)(c) of the Industrial Disputes Act, 1947 for adjudication. The terms of the reference are :-

- ° Whether the termination of services of Shri Giarsi Lal was justified and in order? If not to what relief is he entitled?

According to the demand notice, the claimant was suspended on 28th February, 1984. Charge sheet was given on 6th February, 1984 which was received on 21st February, 1984 which was satisfactorily replied. The management appointed Shri S.K. Gupta, as enquiry officer. The workman sought permission to be represented by a representative. The enquiry was held in the management house, Lodhi Road, Delhi where the workman had danger to his life. The workman had given request to this effect that enquiry should be held in the company premises. Rather the respondent was given a letter that the enquiry would be held at 11.00 a.m. and the workman was directed to participate in the enquiry. This letter was received by him on 2nd March, 1984. Hence he could not participate in the enquiry. Ultimately services of the claimant were terminated on 5th March, 1984. It is alleged that the services have been terminated because of union activities of the workman. It is alleged that the rule of natural justice have been flouted. The claimant has claimed reinstatement with continuity of service and with full back wages

This claim of the claimant has been contested by the respondent management. It is admitted that the claimant joined the respondent on 12th August, 1976. It is denied that union activities have any relation with his dismissal. The workman was chargesheeted for committing misconduct as instigating, organising and illegal strike, assembling inside the factory premises, leaving place of work, abusing and threatening officers, forcible stopping willing workmen from work and sabotaging machinery and Electric connection. His explanation was validly examined which was not found satisfactory. Hence the management constituted domestic enquiry and Shri S.K. Gupta was appointed as enquiry officer. Notice of enquiry was given to him. He did not participate in the enquiry. Hence the enquiry officer was left with no choice except to proceed **ex-parte**. It is further alleged that the claimant was given full opportunity in the enquiry. At the relevant time the situation in the plant was tense. Hence it was decided to arrange the enquiry at Delhi. The workman and his representative were offered fare from the factory to the place of enquiry and back. The Enquiry Officer was justified to proceed **ex-parte** when he did not participate in the enquiry. **Ex-parte** evidence was recorded. The Enquiry Officer found the workman guilty of the charges. It is averred that the findings of the enquiry officer were fair and proper and all the rules of natural justice were observed.

Rejoinder has been filed denying above said averments. The reference was contested on the following issues :--

1. Whether the enquiry was fair and proper ?
2. As per reference ?

I have heard the representatives of both the parties and have gone through the statement of MW-1, Shri S.K. Talwar, MW-2, Shri S.K. Gupta, Enquiry Officer and statement of the workman and the documentary evidence produced by the parties. The factual position of the case is not much disputed and most of the facts stand admitted. My findings seriatim as follows :--

Issue No. 1 :--

The first objection of the workman is that he was not allowed to be represented by a person of his choice. He has requested the management to be represented through Shri R.D. Yadav, Legal Secretary and Shri Nagar Singh advocate, office bearers of Hind Mazdoor Sabha. Hence they were denied the opportunity to defend themselves. This contention of the workman has been contested by the authorised representative of the management. It is contended that under rule 21-A of the standing order **Exhibit M-22**, the workman had the right to be representative by a co-workman of his choice. The relevant portion reads as follows :--

"During the course of such enquiry proceedings the workman shall have the right to get assistance of any co-worker of his own choice of this establishment. Duly signed copy of the proceedings of the enquiry will be made available to the workman ordinarily every day after such enquiry."

There is no negative provision in the rules that the workman will not be allowed to be represented by a legal practitioner and legally trained mind. Hence the representative of the workman has contended that the workman should have been allowed to be represented by Shri R.D. Yadav and Shri Nagar Singh, advocate. He has relied on the judgement of Hon'ble Supreme Court in the Board of Trustees Vs. Dalip Kumar AIR-1983-page 109. In the case cited above the workman was not allowed to be represented by a legal practitioner, whereas the management appointed two legal advisers as presenting Officers. Under rule 12(a) the employee may take the assistance of any other employee or if the employee is Class III or IV employee of an Office Bearer as defined in clause (d) of

Section 2 of the Trade Unions Act, 1926 of the union to which he belongs to present the case on his behalf, but may not engage a legal practitioner for the purpose unless the said Presenting Officer appointed by the disciplinary authority is a legal practitioner, or the disciplinary authority, having regard to the circumstances of the case, so permits."

In view of the above discussion, it was held that the employer was represented by two legally trained minds. Hence the workman was denied fair opportunity to defend himself, as he was not allowed to engage a legal practitioner. The following paragraph No. 11 of the above said judgement is relevant to the facts of the present case :--

"We are faced with the situation where when the enquiry commenced, the rules neither provided for permitting the delinquent employee to be represented by an advocate nor an embargo was placed on such appearance. The rules were silent on this point. But the Chairman of the appellant while rejecting the request of the first respondent seeking permission to appear through a legal practitioner simultaneously appointed M/s. R.K. Shetty and A.B. Chaudhary, Legal Advisor and Junior Assistant Legal adviser respectively in the employment of the appellant as Presenting-cum-Prosecuting Officers. What does this signify ? The normal inference is that according to the Chairman of the appellant the issues that would arise in the enquiry were such complex issues involving intricate legal propositions that the Enquiry Officer would need the assistance of Presenting-cum-Prosecuting Officers. And look at the array of law officers of the appellant appointed for this purpose. Now examine the approach of the Chairman. While he directed two of his law officers to conduct the enquiry as prosecutors, he simultaneously proceeds to deny such legal representation to the delinquent employee, when he declined the permission to the first respondent to appear through a legal practitioner. Does this disclose a fair attitude or fair play in action ? Can one imagine how the scales were weighted and thereby tilted in favour of the prosecuting Officer. In this enquiry the employer would be represented by two legally trained minds at the cost of the Port Trust while the first respondent was asked either to fend for himself in person or have the assistance of another employee such as Nadkarni who is not shown to be a legally trained person but the delinquent employee cannot engage legal practitioner at his cost."

It was further held that :

"Apart from general propositions, in the facts of this case, this enquiry would be a one sided enquiry weighted against the delinquent officer and would result in denial of reasonable opportunity to defend himself."

The facts of the present case are different. In this case the management was represented by Shri S.K. Gogia, an engineer of the respondent. He was not a legally trained person. Hence the management was also not represented by legal trained persons. Hence the workman could also not be allowed to be represented by a legal practitioner or a legal trained person. No rule of natural justice was flouted if the workman was not allowed to be represented by legally trained minds. It is further contended that the enquiry officer was an advocate. Hence the workman should be allowed to be represented by an advocate. He has not been able to give citation in support of his contention. If the enquiry officer is a legally trained person in this case the workman could be represented by legally trained person. The Certified Standing Order of the company has the force of law. There is no provisions for allowing the workman to be represented by legally trained person. The management was not represented by a legal trained person. Hence no injustice was done with the workman.

The Second contention of the representative of the workman is that the place of enquiry was fixed at Management House, Lodhi Road, Delhi and the workman had written that there was danger to his life and enquiry be fixed in the factory premises at Faridabad. It is alleged that the respondent factory is situated in Haryana Near Delhi. The place of enquiry is about 10/15 k.m. from the factory and the management allowed infrow bus fair to the workman and his representative and these facts are not disputed. Hence it cannot be said that the enquiry could not be held at management house, Lodhi Road, Delhi, when the situation in the factory is tense. There is no ground to believe that the workman apprehended danger to his life while going and coming to the place of enquiry, rather if the enquiry is held at place other than the factory it is a circumstance which is favourable to the workman. It has been held by the Hon'ble Supreme Court in judgement of Board of Trustees cited above that one has to consider the nature of enquiry, who held it, where it is held and what is the atmosphere? Domestic enquiry is claimed to be a managerial function. A man of the establishment dons the robe of a judge. It is held in the establishment Office or a part of it. Can it even be compared to the adjudication by an impartial arbitrator or a Court presided over by an unbiased Judge? In the present case both the circumstances were favourable to the workman. The enquiry Officer was not a man of the management, the enquiry was held in the place other than the factory. Hence the atmosphere was more favourable, but the workman was adamant not to participate in the enquiry, which shows hostile attitude and adamant behaviour. Had he attended the enquiry proceedings and faced difficulties he would have placed these before the enquiry officer and if these objections would not have been metted out by the enquiry officer, only then it could be said that the enquiry was not held in proper atmosphere and no opportunity was given to the workman. By absenting from the proceedings he showed that his behaviour was non-cooperative and defiant. In Lakshman Shastri Vs. State of Bihar ; 1969-I-LLJ-page 444, the enquiry was held in a school about 8 miles away from the spot. It was held that rules of natural justice does not require that the enquiry against a person should be held on the spot. In these circumstances I find that by fixing the place of enquiry at Delhi it cannot be said that any prejudice was caused to the workman.

Next contention of the authorised representative of the workman is that an advocate was appointed an enquiry officer, it has prejudiced the workman. It has been held by the Supreme Court in D.D. Cement Vs. Murari Lal; 1971-LIC page 2; S.C. that merely because the enquiry officer was a junior advocate and that he had on occasions been engaged by the management he would not be necessarily biased against the workman. In the present case even there is no evidence that Shri S.K. Gupta has been engaged by the management on certain occasions. Hence the appointment of the enquiry officer could not be said to the circumstances un-favourable to the delinquent workman.

Next contention of the representative of the workman is that the workman has been victimised due to his union activities. It has been held by the Hon'ble Supreme Court in Bharat Iron Works Vs. Bhagu Bhai and others 1976-LIC page 5 that the victimisation is a serious charge by employee against employer which must be properly and adequately pleaded giving all particulars. The fact that there is a union and legitimate trade union activities and employee is a member of trade union or active office bearer, is not sufficient to establish victimisation. In the present case, there is no evidence that the workman has been victimised due to his union activities. It is contended that the workman was proceeded **ex-parte** and the enquiry was concluded in a short time. It shows that he was victimised. It is admitted that the workman was duly informed the date of enquiry. He did not appear. Hence he was rightly proceeded **ex-parte**. It is held by the Hon'ble Supreme Court in Brook Bond Company India Ltd., Vs. S. Subrahman ; 1961-II-LLJ page 417 that where the workman insist that they must be allowed to be represented by their counsel and on the refusal of the same they boycotted the enquiry. Such Enquiry could be held **ex-parte**. So in

the present case the claimant boycotted the enquiry and he was rightly proceeded against ~~ex-parte~~. If the enquiry officer concluded the enquiry in a short time it was an act of efficiency and it was not the case of victimisation. In view of above discussions I find that a fair and proper enquiry was conducted. It is contended that the workman has been victimised due to his union activities and hence the order of dismissal is illegal and un-justified. This contention of authorised representative of the workman has no force. The workman did not participate in the enquiry. The enquiry was fair and proper. ○

✓ Issue No. 2 :--

There were serious charges against the workman that he sabotaged machinery and electric connection, instigated other workmen to stop work and indulge in subversive activities in the factory premises. The representative of the workman has no dispute that the above facts if proved amount to gross mis-conduct. The workman had no right to stop other workmen from working. He has no right to sabotage machinery and electric connection. If such activities were allowed, industrial peace will be no more and production will suffer and hence such activities can not be allowed in the factory premises. It has been held by the Hon'ble Supreme Court in East India Hotels Vs. their workmen ; 1974-LIC page 532 that when a domestic enquiry is proper, Tribunal has no jurisdiction to set aside the judgement or decision of the employer as an appellate body. Interference is justified only when the enquiry is not fair and proper and the management is guilty of un-fair labour practice. It has been held in D.D. Cement Ltd. Vs. Murari Lal 1971-LIC page 2 that workman blowing whistle at the instance of the other workman leading to stoppage of work in the factory. Such act of indiscipline can not be tolerated by an employer. In the present case the enquiry was fair and proper and the workman was not victimised and it cannot be said un-fair labour practice. The conduct of the workman amounts to gross mis-conduct which cannot be tolerated by the employer. Hence he cannot be reinstated. I, therefore, find that the order of termination is legal and justified. He is not entitled to any relief.

The award is given accordingly.

Dated the 19th September, 1985.

R.N. SINGAL,
Presiding Officer, Labour Court,
Faridabad.

The 11th December, 1985

No. 9/5/84-6Lab./10695.--In pursuance of the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal, Faridabad in respect of the dispute between the Workman and the management of M/s. A.K. Goswami, Contractor Transport and General Order Suppliers, 39 Chawla Colony, Ballabgarh.

BEFORE SHRI R.N. BATRA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA, FARIDABAD

Reference No. 71/1984

Between

SHRI DEVEKI NANDAN WORKMAN AND THE MANAGEMENT OF M/S A.K. GOSWAMI, CONTRACTOR
TRANSPORT AND GENERAL ORDER SUPPLIERS, 39 CHAWLA COLONY, BALLABGARH

Present :--

Shri Darshan Singh for the workman.

Shri K.P. Aggarwal for the Management.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana referred the following dispute between Shri Deveki Nandan Workman and the Management of M/s. A.K. Goswami, Contractor; Transport and General Order Suppliers, 39, Chawla Colony, Ballabgarh, to this Tribunal for adjudication :--

Whether the termination of service of Shri Deveki Nandan was justified and in order? If not, to what relief he is entitled?

2. Notices were issued to both the parties. The claimant in his demand notice dated 13th December, 1983 and claim statement dated 4th September, 1984 alleged that he was working with the respondent since 5th March, 1977, but he was not allowed to join duty with effect from 15th November, 1983 illegally and as such termination of his services was not justified and he was entitled to reinstatement with full back wages.

3. The respondent in his written statement dated 3rd October, 1984 pleaded that the reference was premature because the services of the claimant were not terminated by the respondent when the demand notice was served. It was further pleaded that the respondent took contract from the Management of M/s. Starwire India, Ballabgarh, on 4th January, 1982 and that the claimant worked for 24 days from September, 1983 to November, 1983. It was further pleaded that the claimant willfully absented himself from duty with effect from 15th November, 1983 because he had taken ration worth Rs. 759/- from the local shopkeeper at Ballabgarh on the surety of the respondent. It was pleaded that the name of the claimant was not struck off from the muster roll and termination letter was not issued and that the respondent was willing to take the claimant back on duty without back wages.

4. On the pleadings of the parties, the following issues were framed on 3rd December, 1984 :--

(1) Whether the reference is premature? OPM

(2) Whether the claimant has been absenting himself without any permission from the Management as pleaded? OPM

(3) Whether the claimant is gainfully employed? OPM

(4) Whether the termination of service of the workman was justified and in order? If not, to what relief is he entitled? OPM

5. It may be mentioned that the Respondent has examined one witness and documents Exhibit M-1 and M-2 have been tendered into evidence. The claimant has appeared in the witness-box and documents, Exhibit W-1 to W-3 have been tendered into evidence. I have heard the representative of both the parties.

Issue No. 1

6. The demand notice is dated 13th December, 1983, Exhibit M-1 is the reply dated 26th December, 1983 filed by the respondent in Conciliation proceedings in

which it was alleged that the services of the claimant had not been terminated and that the claimant absented himself from duty without permission and that he could join duty without payment of back wages. The same plea was taken in the conciliation report, Exhibit M-2. The claimant's plea was that his services were terminated with effect from 15th November, 1983, while the plea of the respondent was that the services of the claimant had not been terminated, but could join duty without back wages. It is thus apparent that the respondent has not terminated the services of the claimant uptill now and that on the date of the demand notice dated 13th December, 1983, the name of the claimant was not struck off from the muster roll. The respondent took a specific plea in conciliation proceedings in December, 1983 that the services of the claimant had not been terminated and the reference was premature and further that the claimant can join duty without payment of back wages. The claimant has not produced any document to show that his name was struck off on 15th November, 1983. Under these circumstances, the respondent has succeeded in proving that the name of the claimant was not struck off from the muster roll and that his services were not terminated on 13th December, 1983 when the demand notice was given. As such, the reference is premature and thus it is not necessary to discuss the other issues. The award is passed accordingly.

Dated 2nd December, 1985.

R.N. BATRA,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

Endst. No. 913, dated the 2nd December, 1985

Forwarded (four copies) to the Commissioner and Secretary to Government Haryana, Labour and Employment Departments, Chandigarh as required under Section 15 of the Industrial Disputes Act, 1947.

R.N. BATRA,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

No. 9/5/84-6Lab./10696.--In pursuance of the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal, Faridabad in respect of the dispute between the workman and the management of M/s. S.G. Steel Pvt. Ltd., Plot No. 6, Sector 4, Industrial-cum-Housing Estate, Ballabgarh, Faridabad.

BEFORE SHRI R.N. BATRA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA,
FARIDABAD

Reference No. 107/84

Between

SHRI SHER MAL WORKMAN AND THE MANAGEMENT OF M/S. S.G. STEEL PVT. LTD.,
PLOT NO. 6, SECTOR 4, INDUSTRIAL-CUM-HOUSING ESTATE, BALLABGARH (FARIDABAD)

Present :--

Shri Manohar Lal for the workman.

Shri Rajinder Dhawan for the Management.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana referred the following dispute between Shri Sher Mal workman and the management of M/s. S.G. Steel Pvt. Ltd., Plot No. 6, Sector 4, Industrial-cum-Housing Estate, Ballabgarh (Faridabad) to this Tribunal for adjudication :--

Whether the termination of service of Shri Sher Mal was justified and in order? If not, to what relief is he entitled?

2. Notices were issued to both the parties. Shri Rajinder Dhawan, representative of the management, stated that the dispute between the parties had already been settled,--vide settlement, Exhibit M-1 and that the claimant had already received Rs. 3500/- in full and final settlement of his claim,--vide receipt copy, Exhibit M-2 and that no dispute was now left between the parties and that the claimant had given up rights of reinstatement etc. Shri Manohar Lal, representative of the workman, stated that he had heard the above statement made by the representative of the management, which was correct, and that the dispute had already been settled,--vide settlement, Exhibit M-1 and that the workman had already received Rs. 3500/- in full and final settlement of his claim and that no dispute was now left between the parties. In view of the testimony of Shri Rajinder Dhawan, representative of the Management, and Shri Manohar Lal representative of the workman, and recitals made in the documents, Exhibit M-1 and M-2, the dispute between the parties stands settled as mentioned above. The award is passed accordingly.

Dated 2nd December, 1985.

R.N. BATRA,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

Endst. No. 914, dated 2nd December, 1985.

Forwarded (four copies) to the Commissioner and Secretary to Government Haryana, Labour and Employment Departments, Chandigarh as required under Section 15 of the Industrial Disputes Act, 1947.

R.N. BATRA,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

No. 9/5/84-Lab./10697.--In pursuance of the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal, Faridabad in respect of the dispute between the workmen and the management of M/s. Sirocco Auto Pvt. Ltd., Sector 6, Faridabad.

BEFORE SHRI R.N. BATRA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA,
FARIDABAD

Reference No. 32/1985

Between

THE MANAGEMENT OF M/S. SIROCCO AUTO PVT. LTD., SECTOR 6, FARIDABAD AND
ITS WORKMEN.

Present :--

Shri C.L. Oberai for the workman.

None for the management.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana referred the following dispute between the management of M/s. Sirocco Auto Pvt. Ltd., Sector 6, Faridabad, to this Tribunal for adjudication :--

- (1) Whether the workers are entitled to bonus at the rate of 20 per cent for the year 1983-84 ? If so, with what details ?
- (2) Whether the workers are entitled to one pair of shoes ? If so, with what details ?
- (3) Whether the workmen are entitled to one k.g. soap per month for washing clothes ? If so, with what details ?
- (4) Whether the workmen are entitled to two sets of uniforms ? If so with what details ?

2. Notices were issued to both the parties. Ex parte proceedings were ordered against the Management on 24th October, 1985.

3. Shri Dharambir Singh, WW-1 has been examined by the claimants, who stated that the respondent factory earned profits during the year 1983-84 and that the sales were to the extent of Rs. 65/70 lakhs. He further stated that the respondent factory manufactured clutch plates and the margin of profit was 50 per cent and that the goods were sold throughout India. He further stated that the bonus at the minimum rate of 8.33 per cent had not been paid for this period and that the factory was running for the last 10 years. To similar effect is the statement of Shri Kanwar Pal, Assembly Fitter of this factory, who is also General Secretary Sirocco Auto Employees Union. No documentary evidence has been led by the claimant to show that the Management earned profit during the year 1983-84 and that there was allocable surplus, which could entitle the workers to get bonus beyond 8.33 per cent. The oral testimony of these witnesses does not help the workers because even the copy of the balance sheet and profit and loss account has not been filed to show the financial position of the factory. Consequently, the workers are entitled to bonus at the rate of 8.33 per cent because it is stated that the bonus at this rate has not been given by the Management.

4. WW-1 Shri Dharambir Singh stated that the workers had to wear leather shoes because otherwise they would receive injury due to fall of chips from the machinery while running the same. WW-2 Shri Kanwar Pal made similar statement. Consequently, the workers are entitled to one pair of leather shoes per annum because both these witnesses have deposed that the respondent is in a position to bear the amount of this facility.

5. WW-1 Shri Dharambir Singh stated the workers used to get one set of uniform after six months consisting of one pant and one shirt of jean cloth, but the management had stopped doing so for the last three years. WW-2 Shri Kanwar Pal has made a similar statement. In view of the evidence of both these witnesses, the workers are entitled to two sets of uniforms each year and that each set of uniform consisting of one pant and one shirt of jean cloth be supplied after six months.

6. WW-4 Shri Dharambir Singh stated the clothes of workers became dirty when they worked on the machine and that each worker is entitled to one k.g. soap. WW-2 Shri Kanwar Pal has supported him in this respect. In view of this evidence, the workers are entitled to one k.g. soap per month for washing the clothes.

7. In view of the above discussion, it is held that the workers are entitled to bonus at the minimum rate of 8.33 per cent per annum during the year 1983-84 and also entitled to one pair of leather shoes in a year, one k.g. soap per month and two sets of uniforms per annum, i.e., one set consisting of one pant and one shirt of jean cloth every six months. The award is passed accordingly.

Dated 2nd December, 1985.

R.N. BATRA,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

Endst. No. 915, dated the 2nd December, 1985.

Forwarded (four copies) to the Commissioner and Secretary to Government Haryana, Labour and Employment Departments, Chandigarh as required under Section 15 of the Industrial Disputes Act, 1947.

R.N. BATRA,
Presiding Officer,
Industrial Tribunal, Haryana
Faridabad.

No. 9/5/84-6Lab./10698.--In pursuance of the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal, Faridabad in respect of the dispute between the workman and the management of M/s. Remington Rand of India Ltd., Mathura Road, Faridabad.

BEFORE SHRI R.N. BATRA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA,
FARIDABAD

Reference No. 283/1982

Between

SHRI JASWANT SINGH WORKMAN AND THE MANAGEMENT OF M/S REMINGTON RAND
OF INDIA LTD., MATHURA ROAD, FARIDABAD.

Present :--

Shri B.R. Dua for the workman.

Shri R.N. Rai for the Management.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana referred the following dispute between Shri Jaswant Singh workman and the Management of M/s. Remington Rand of India Ltd., Mathura Road, Faridabad, to this Tribunal for adjudication :--

Whether the termination of service of Shri Jaswant Singh was justified and in order? If not, to what relief is he entitled?

2. Notices were issued to both the parties. The claimant in his demand notice dated 28th April, 1982 alleged that the workman belonged to Remington Rand Karamchari Union, who submitted a charter of demand, but the management did not concede their demands, but entered into a settlement with a false Union due to which the workers of Remington Rand Karamchari Union did not agree and that the Management started victimising them. The claimant was also given a false charge-sheet which was replied by him and the Management appointed Shri J.S. Saroha as Enquiry Officer, but, the objection of the claimant was over-ruled. It was alleged that enquiry was held in violation of the principles of the natural justice and that the claimant was not allowed to be represented by Shri Sadakat Hussain, Shri Babu Khan and Shri K.N. Joshi. It was further alleged that the Enquiry Officer closed the defence on 13th November, 1981 without giving any reason. It was further alleged that the Enquiry Officer was requested to ask the Management to produce the log book and to summon M/s. Uppal Electricals, but the Enquiry Officer did not accede to his request. It was alleged that services of the claimant were terminated illegally and as such he was entitled to reinstatement with full back wages.

3. The Management in its written statement dated 7th October, 1982 pleaded that the claimant sent the demand notice directly to the Conciliation Officer and no industrial dispute existed between the parties. It was further pleaded that there were two Unions of the employees in the respondent company and they served demand notices, when the matter went to the Conciliation Officer and a settlement was arrived at on 6th August, 1980 between the Management and Remington Employees Union. It was further pleaded that the demand raised by the Remington Rand Karamchari Union was the same due to which the Government did not consider the demand notice of the said Union and further that the workers of both the Unions accepted the benefit of the settlement dated 6th August, 1980 including the claimant. It was further pleaded that the claimant committed acts of serious misconduct, due to which he was charge-sheeted on 5th April, 1981 when the claimant submitted his explanation, which was found to be unsatisfactory and Shri J.S. Saroha was appointed as Enquiry Officer. It was further pleaded that the Enquiry Officer conducted the enquiry and objection raised by the claimant were dealt with by him who permitted the claimant to bring a co-worker when the claimant wanted Shri Sewan to represent him. It was further pleaded that the claimant participated in the enquiry and cross-examined the witnesses of the Management and led evidence in defence. It was further pleaded that the Enquiry Officer was impartial and honest and conducted the enquiry according to the principles of Natural justice. It was further pleaded that Shri Sadakat Hussain, Sri Babu Khan and K.N. Joshi were dismissed from service of the Company and were no longer its employee and as such could not represent the claimant. It was further pleaded that the Enquiry Officer had no authority to call any witness on behalf of any party.

4. The claimant in his rejoinder dated 1st November, 1982 reiterated the pleas taken in the claim statement.

5. On the pleadings of the parties, the following issues were framed on 2nd November, 1982 :--

(1) Whether the workman raised any dispute upon the Management? If not, to what effect? OPW

(2) Whether the domestic enquiry is proper and fair? OPM

(3) Whether the termination of service of Shri Jaswant Singh was justified and in order? If not, to what relief is he entitled? OPM

6. It may be mentioned that the Management has examined two witnesses and documents. **Exhibit M-1 to M-78** have been tendered into evidence. The claimant himself appeared in the witness box and documents, **Exhibit W-1 to W-32** have been tendered into evidence. After going through the entire evidence and hearing the representatives of both the parties, my findings on the above issues are as under :--

Issue No. 1--

7. **WW-1** Shri Jaswant Singh claimant stated in cross examination that he had given demand notice to the Management as well, which was sent by registered post and that postal receipt was **Exhibit W-32** and A.D. receipt was **Exhibit W-4**. The demand notice is dated 28th April, 1982. The A.D. receipt **Exhibit W-4** shows that the letter was received by the Management. **MW-2** Shri Ajit Singh Sethi, Personnel Manager, stated that the demand notice was received through the Conciliation Officer, --vide letter **Exhibit M-74**. In cross-examination, he stated that receipt register was not maintained by them. He further stated that he could not say if the demand notice was received, --vide A.D. receipt, **Exhibit W-4**. The testimony of the claimant and recitals made in the document **Exhibit W-4** go to show that the registered letter was received by the Management. The claimant has clearly stated that the demand notice was sent by registered post, which was duly received by the Management, --vide A.D. receipt **Exhibit W-4** and no other letter was sent to the Management by the claimant. Consequently, the Management received the demand notice from the claimant in this case and the plea taken by the Management that it was not received by them from the claimant is without any force. It may be mentioned that the representative of the Management placed reliance on the ruling reported as **New Delhi Tailoring Mazdoor Union and S.C. Sharma & Co. (P) Ltd. Etc., 1970 (39) F.L.R. page 195** in which it is laid down that a mere demand to the Government with a dispute being raised by the workmen with their employer cannot become an industrial dispute. The second ruling is **Fedders Lloyed Corporation Private Ltd. and Lieutenant Governor Delhi and others, 1970(2) F.L.R. page 343**, in which, it is laid down that the demand by the workmen and rejection by the employer was necessary and that the demand on Conciliation Officer and its communication by him was not sufficient. The third ruling is **Sindhu Resettlement Corporation Ltd. V. The Industrial Tribunal of Gujarat and Ors, 1963(1) S.C.R. page 515**, in which it is laid down that a mere demand to the Government without a dispute being raised by the workmen with their employer cannot become an industrial dispute. The representative of the claimant has placed reliance on the ruling reported as **Shambu Nath Goyal and Bank of Baroda Jullundur, 1978-I-L.L.J., page 484**, in which it is laid down that making a demand for reinstatement is not a **sine-qua-non** for an industrial dispute to come into existence. In the latest ruling reported as **M/s. Rama Krishna Mills (Coimbatore) Ltd. Genapathy Fost, Coimbatore and the Government of Tamil Nadu Etc. 1984-II-L.L.J page 259**, in which a large number of previous rulings have been considered, it was held that a written demand on the management is not in all cases a **sine-qua-non** and that there must arise a dispute or difference within the meaning of the Industrial Disputes Act, 1947, and that the talks and discussions before the Assistant Commissioner of Labour related to the order of dismissal and the demand to set them at naught and take back the workmen. It was held that the demand as such need not in all cases be directly made by representation to the management and the demand could be made through other sources also.

8. It is thus held that the workman raised the dispute upon the Management by sending the demand notice, as mentioned above. The issue is decided accordingly in favour of the claimant.

Issue No. 2---

9. Exhibit M-2 is the copy of the charge-sheet dated 5th April, 1981, in which it is alleged that on 14th March, 1981, the claimant was on duty in the second shift and that 30 HP Siemen make for Ingersel Rand AIR Compressor was worked in an over-heated condition for substantial period which resulted into breakdown. It is alleged that the matter was not reported by the claimant to his superiors and that on 15th March, 1981 when the motor was examined, it was found in a damaged condition, which resulted in considerable damage to the Company's property and production loss of Safe Files and portable components. It was alleged that the claimant had shown utter negligence/ wilful carelessness in the discharge of his duty.

10. The Management has examined MW-1 Shri J.S. Saroha Advocate, who stated that he was appointed as Enquiry Officer,--vide letter Exhibit M-1 and received copy of the charge-sheet Exhibit M-2 along with said letter and explanation of the claimant, Exhibit M-3. He further stated that notice was issued by him to hold enquiry and that Exhibit M-4 contained the enquiry proceedings. He stated that the claimant participated in the enquiry throughout and was represented by Shri Sewan co-workman of his choice and cross-examined the witnesses of the management and led his defence evidence. He further stated that the documents Exhibit M-5 to 52 were produced during the enquiry and that Exhibit M-53 was the enquiry report submitted by him. MW-2 Shri Ajit Singh Sethi, Personnel Manager stated that previously there was two Unions in the respondent company and that the Management entered into settlement with Remington Employees Union in 1980 copy Exhibit M-54 and that all the workers received benefit including the claimant,--vide documents Exhibit M-55 and M-56. He further stated that the demand made by the Remington Rand Karamchari Union was rejected by the Government,--vide document Exhibit M-59 and their writ petition was dismissed,--vide order Exhibit M-69. He further stated that Exhibit M-61 to M-64 were written by Remington Rand Karamchari Union. The letters Exhibit M-65 to M-68 were sent to the claimant which were warning letters. He further stated that the letters, Exhibit M-69 to M-71 were received from the Union and dismissal letter of the claimant was Exhibit M-72, while the letter Exhibit M-73 was written to the claimant. He also proved letters Exhibit M-75 to M-78.

11. Shri Jaswant Singh claimant has appeared as WW-1 and stated that he was employed in the Respondent Company on 13th September, 1974, when three charge-sheets were given to him. He further stated that one charge-sheet was withdrawn by the Management while no report was given on the second charge-sheet and third charge-sheet relating to the present reference was a false one. He stated that the Management did not relish his trade union activities and that the Trade Union Leaders were dismissed by the Management. He also stated that he had raised objection regarding the appointment of the Enquiry Officer, but to no effect. He further stated that the letters, Exhibit W-7 to W-22 were written by him to the Management,--vide postal receipts, Exhibit W-23 to W-25 and demanded the list of witnesses and also log book etc. He further stated Shri Sadakat Hussain, Shri Babu Khan and K.N. Joshi were not permitted to represent him in the enquiry and that the Enquiry Officer did not summon the proprietor of M/s. Uppal Electrical Faridabad, Mr. S.S. Kapoor, Mr. M.L. Thapa, A.L. Bannerjee and Mr. Gambhir. He also proved the documents Exhibit W-26 to W-31.

12. A persual of the above evidence would show that Exhibit M-2 is the charge-sheet while, Exhibit M-3 is the explanation given by the claimant. Shri J.S. Saroha, was appointed as Enquiry Officer and his proceedings are Exhibit M-4. This document shows that the claimant was represented by Shri K.N. Dewan and that the Management examined Shri I.L. Uppal, Shri R.P. Gupta, Shri T.R. Sidhwani and Shri A.K. Mukerjee, who were cross-examined by the claimant. The claimant himself appeared before the Enquiry Officer and examined Shri Kulwant Singh and Shri S.N. Mukerjee.

The enquiry was closed on 13th January, 1981 and the report, copy Exhibit M-53, was submitted by the Enquiry Officer to the Management in which the entire evidence led by the parties has been referred to and the Enquiry Officer found that the charges stood proved against the claimant.

13. It was argued by the representative of the workman that the claimant was not permitted to be represented by Shri Sadakat Hussain, Babu Khan and Shri K.N. Joshi. The plea of the Management is that these persons were dismissed. The claimant was represented by Shri K.N. Sivan his representative during the enquiry. In the ruling reported as **N. Kaliadi and others V. M/s. Tata Locomotive and Engineering Co. Ltd., Jamshedpur**, 1950-67(4) S.C. L.J. page 2721, it is laid down that in a domestic enquiry the claimant is not entitled to be represented by a member of the union. In the ruling reported as **Hari Das Malakar and others and Joy Engineering Works**, 1975-II-LLJ page 26, it is laid down that there was not violation of the principle of natural justice simply because the workman was not allowed to represent his case before the domestic enquiry by a suspended co-workman of his choice. The representative of the workman placed reliance on the ruling reported as **Bast Karmgar Union and Bombay Electric Supply and Transport Undertaking and others**, 1985(50) F.L.R. page 33. This ruling is distinguishable on facts because the same related to the provisions of Section 22(ii) of the Maharashtra Recognition of Trade Union and Prevention Unfair Labour Practices Act, 1971, which clearly confers right upon an unrecognised Union to appear on behalf of any its member in any domestic enquiry. The second ruling is **The Board of Trustees of the Fort of Bombay and Dilip Kumar Raghavendranath Nadkarni and others** 1984(46) F.L.R. page 30, which is also distinguishable on facts because the same relates to Regulations 12(b) of the Bombay Fort Trust Employee's Regulations, 1976, which permitted a claimant to engage a legal practitioner, if a presenting Officer appointed by the disciplinary authority was a legal practitioner. The argument, therefore, does not carry any weight because the claimant was duly representative in accordance with the Certified Standing Orders of the Respondent Company.

14. It was then argued that no second show-cause notice was given to the claimant. Reliance was placed on the ruling reported as **State of Maharashtra and Baishankar Avalram Joshi and another** 1979(20) F.L.R. 289, in which it is laid down that failure to supply the copy of report of the Enquiry Officer to the Delinquent Government servant amounted to denial of reasonable opportunity within Article 311(2) of the Constitution. This ruling is distinguishable on facts because the same relates to the Government servant, who is governed by the article 311(2) of the Constitution and these provisions are not applicable to the present case. The second ruling is **Messrs Lakshiratan Cotton Mills Co. Ltd. and Its Workmen** 1976-L.L.J. 174, in which it is laid down that where there was a failure to give adequate opportunity to show cause against proposed punishment, it amounted to violation of clause (1) of the standing order 26. This ruling is distinguishable on facts because the same relates to different standing orders and the provisions of U.P. State's Industrial Disputes Act, 1947, applied to that case. In the standing orders of the Company, it is nowhere laid down that second show cause should be given to the delinquent.

15. It was then argued that the list of witnesses was not supplied to the claimant. Firstly, the claimant has cross examined the witnesses produced by the Management and produced his defence evidence. Moreover the enquiry proceedings, Exhibit M-4 show that on 13th November, 1981 the claimant stated that he was not ready to tell the names of his witnesses as he wanted to keep it as secret. It is thus apparent that the claimant himself did not wish to disclose the names of his witnesses whereas he expects that the Management should disclose the names of the witnesses to him. Consequently, the argument does not carry any weight because it is the duty of both the parties to give lists of witnesses and not of the management alone.

16. It was then argued that the claimant was victimised being active Member of the Union. As already mentioned, the claimant was chargesheeted and domestic enquiry was held against him. Consequently the proceedings were not initiated against him merely because he was active member of the Union. In the ruling reported as **Anand Bazar Patrika (P) Ltd. V. Its Workmen**, 1964(3) S.C.R. page 601, it is laid down that the findings as to victimisation should be drawn only where the evidence has been led to justify it. In the ruling reported as **M/s Bharat Iron Works V. Bhagubhai Balubhai Patel and others**, 1976 S.C.C.(L.&S.) page 92, it is laid down that onus of establishing a plea of victimisation will be upon the person pleading it. In the ruling reported as **Employees in relation to the Madhuband Colliery and their Workmen**, 1950-67(2) Supreme Court Labour Judgement, 876, it is laid down that whereon the question of victimisation no evidence was led on behalf of the employee, the finding of the Tribunal on this point is vitiated in law. The argument is without any force because the Management chargesheeted and held enquiry against the claimant with regard to the charges contained in the chargesheet, **Exhibit M-2** and as such it cannot be held that the claimant was victimised.

17. It was further argued that the Enquiry Officer was not an independent person and as such the enquiry was vitiated. Shri J.S. Saroha Advocate was appointed as Enquiry Officer. It was argued by the representative of the Management that the Enquiry Officer was an independent person. In the ruling reported as **M/s Dalmia Dadri Cement Ltd. V/s Murari Lal Bikaneria**, 1971-Lab. I.C. 1, it is laid down that where the Enquiry Officer was a junior advocate and at times appearing on behalf of Management, no bias could be inferred. In the ruling reported as **Saran Motors Pvt. Ltd. New Delhi and Vishwanath and another**, 1964(9) F.L.R. 7, it is laid down that where the enquiry was held by a person employed as lawyer and was paid remuneration for holding enquiry, enquiry could not be held incompetent. The argument, therefore, fails.

18. It was argued that the finding given by the Enquiry Officer was wrong because there was no evidence to prove that damage was caused by the claimant. The representative of the Management, on the other hand, argued that the evidence led before the Enquiry Officer proved the negligence of the claimant. It was also argued that doctrine of res-ipsa loquitur applied to the present case because it was for the claimant to explain the damage caused to 30 H.P. Motor. Reliance was placed on the ruling reported as AIR-168 Madhya Pradesh 47, in which it is laid down that in case of accident, the presumption of negligence can be raised. Reliance was also placed on the ruling reported as **State of Punjab V. M/S Modern Cultivators** AIR-1965 Supreme Court 17, in which damage was caused due to breach of canal and rule of res-ipsa loquitur was applied. In the present case, the Enquiry Officer has discussed the evidence of both the parties and given reasons for coming to the conclusion. The findings are based on evidence and as such no interference with the same is called for.

19. It was argued that the enquiry Officer had not summoned M/s. Uppal Electrical and other persons. It was argued by the representative of the Management that it was the duty of the claimant to produce the witnesses before the Enquiry Officer and that the claimant desired that the witnesses should be summoned by the Management when the Management had produced its evidence and was not prepared to examine them. On 9th November, 1981, the claimant asked the Enquiry Officer that the Management should call Shri K.S. Uppal as witness. The representative of the Management stated that they did not want to examine Shri K.S. Uppal. He further stated that the log book could not be produced as the same was missing. The representative of the Management stated that all the relevant documents had been produced in the enquiry. In the ruling reported as **Sudhendra Narayan Sinha V. Union of India and other** 1968-Lab. I.C., 1535, it is laid down that where the witness was not under the administrative

control of the Enquiry Officer, he had no power to compel the witness to be present by any legal process in a disciplinary proceeding. In the ruling reported as **The Management of M/s Imperial Book Depot Jama Masjid, Delhi V. Ved Prakash Aggarwal and another**, 1969-Lab.I.C. 120, it is laid down that in a domestic enquiry, the officer holding the enquiry can take no valid or effective steps to compel the attendance of any witness. In view of the above rulings the Enquiry Officer cannot compel the attendance of any witness when the Management did not want to produce any witness. On the other hand, it was the duty of the claimant to produce the witness if he so desired. The argument raised by representative of the workman, therefore, fails.

20. In view of the above discussion it is held that the enquiry is fair and proper. The issue is decided accordingly in favour of the Management.

Issue No. 3:

21. The enquiry has been found to be proper as mentioned above. It was argued by the representative of the claimant that punishment awarded to the claimant was harsh and oppressive. The representative of the Management on the other hand argued that punishment was proportionate to the misconduct attributed to the claimant. Reliance was placed on rulings reported as **Pure Drinks (Private) Ltd. and Kirat Singh Maungatt and another**, 1961(3) F.L.R. 46, **The Calcutta Jute Mfg. Co. Ltd. V. Calcutta Jute Mfg. Workers Union**, 1962(1) S.C.R. 483, **Tata Oil Mills Co. Ltd. V. Its Workmen**, 1964(7) S.C.R. 555, **Bengal Bhatedee Coal Co. V. Shri Ram Prabesh Singh and Ors.** 1964(1) S.C.R. page 709. All these rulings are distinguishable on facts because the provisions of Section 11-A of the Industrial Disputes Act, 1947 were not dealt with in these cases because these provisions were enacted in 1971. In the ruling reported as **the General Manager, Chandigarh Transport Undertaking, Chandigarh V. Ranjit Singh and another**, 1982-Lab.I.C. 604, it is laid down that Industrial Tribunal could interfere with the punishment under Section 11-A of the Industrial Disputes Act, 1947, only if it was so harsh as to suggest victimisation. In the ruling reported as **Sarabhai M. Chemicals (S.M. Chemicals and Electronics) Ltd. and M.S. Ajmere and another**, 1980-I.L.L.J. page 395, it is laid down that under Section 11-A of the Industrial Disputes Act, 1947, the Tribunal can interfere with the punishment if the same is excessive and shockingly disproportionate. In the ruling reported as **The East India Hotels V. Their Workmen and Others**, 1974-Lab.I.C. 532, it is laid down that the Industrial Tribunal can interfere with the punishment under Section 11-A of the Industrial Disputes Act, 1947 if the same is harsh and oppressive. In the ruling reported as **M/s Godfray Phillips India Ltd. and Mania Vasudeo and others**, 1973 I.L.L.J. 278, it is laid down that Tribunal can interfere with the punishment where the same is so harsh as to suggest victimisation. In present case the Management has held enquiry against the claimant only who was chargehand. The other persons who were assisting the claimant and supervising his work, have not been touched by the Management. It cannot be believed that such a huge machine would be run, controlled and supervised by one person namely the claimant who is only a workman, it is also the job of helpers and supervisor to look after 30 H.P. motor. Under these circumstances, the punishment awarded to the claimant is disproportionate to the misconduct attributed to him because his helpers and supervisor go scot free and the entire blame is being laid on the shoulders of the workman who was taking active part in the trade Union activities. Consequently, the impugned order of dismissal is set aside. The ends of justice would be met if the claimant is reinstated but he is deprived of his full back wages for the misconduct attributed to him. The award is passed accordingly.

Dated 3rd December, 1985.

R.N. BATRA,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

Indst. No. 945, dated 4th December, 1985.

forwarded (four copies) to the Commissioner and Secretary to Government Haryana, Labour and Employment Departments, Chandigarh as required under Section 15 of the Industrial Disputes Act, 1947.

R.N. BATRA,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

No. 9/5/84-6Lab./10699.--In pursuance of the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal, Faridabad in respect of the dispute between the workman and the management of M/s. Remington Rand of India Ltd., Plot No. 3, Sector 6, 20/7 Mathura Road, Faridabad.

BEFORE SHRI R.N. BATRA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA,
FARIDABAD

Reference No. 120/1982

Between

SHRI UDEY SINGH RAWAT WORKMAN AND THE MANAGEMENT OF M/S. REMINGTON RAND OF
INDIA LTD., PLOT NO. 3, SECTOR 6, 20/7 MATHURA ROAD, FARIDABAD

Present :--

Shri H.R. Dua for the workman.

Shri R.N. Rai for the Management.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana referred the following dispute between Shri Udey Singh Rawat, workman and the Management of M/s. Remington Rand of India Ltd., Plot No. 3, Sector 6, 20/7 Mathura Road, Faridabad to this Tribunal for adjudication :--

Whether the dismissal of Shri Udey Singh Rawat was justified and in order?
If not, to what relief is he entitled?

2. Notices were issued to both the parties. In the demand notice dated 24th December, 1981, it was alleged by the claimant that he was employed by the respondent as Press Operator,--vide letter dated 18th July, 1975 as probationer for a period of three months, but later on was confirmed,--vide letter dated 1st June, 1976 and continued in service till his services were terminated on 17th March, 1981 when he was drawing Rs. 450/- per month as wages inclusive of Provident Fund and E.S.I. contribution. It was further alleged that the claimant was the Organising Secretary of the Remington Rand Karmchari Union and was a protected workman and that the Management did not implement the settlement dated 29th January, 1979, when the Union pressed hard for the implementation of the settlement. It was alleged that the Management did not relish the trade union activities of the claimant. It was further alleged

that the Union served the Management with the demand notice dated 28th April, 1981 and submitted five copies to the Labour-cum-Conciliation Officer, Faridabad, but the Management did not produce the relevant documents in conciliation proceedings. It was alleged that the Management entered into settlement with the non-existing Union and in order to harass and penalise the office bearers and members of the Remington Rand Karamchari Union, the Management issued false and fabricated chargesheet and appointed highly interested Enquiry Officer. It was alleged that the claimant objected to the appointment of the Enquiry Officer and prayed that he be allowed to be represented by Shri Babu Khan, Shri Sadakat Hussain and Shri K.N. Joshi, but the Enquiry Officer did not accept his request. It was further alleged that the claimant filed a civil suit alongwith application for ad interim injunction, which was ultimately granted by the learned District Judge, but the Enquiry Officer did not obey the stay order and concluded the enquiry, which was a fake one. It was further alleged that the order terminating the services of the claimant, --vide letter dated 17th June, 1981 was illegal and as such the claimant was entitled to reinstatement with full back wages.

3. The Management in its written statement dated 7th September, 1982 pleaded that the demand notice was directly sent to the Conciliation Officer and no industrial dispute was raised with the Management and as such no industrial dispute existed between the parties. It was pleaded that the claimant was appointed as Press Operator with effect from 18th July, 1975 and was drawing Rs. 450/- per month as wages at the time of dismissal on 17th June, 1981. It was further pleaded that the claimant was dismissed from service for acts of grave misconduct for which he was chargesheeted and subsequently a domestic enquiry was held against him and that the Enquiry Officer found guilty of the charges levelled against him. It was denied that the claimant was dismissed due to his Trade Union activities nor the Management was aware of such activities. It was pleaded that the claimant was one of the signatories of the settlement dated 29th January, 1979, but there was some difficulty in introducing final (revised) incentive scheme for which a negotiation with the Union/Labour Department took place. It was pleaded that no demand notice dated 28th April, 1981 was served upon the Management and the demand notice dated 28th April, 1980 was submitted by the Remington Rand Karamchari Union, which was taken up by the Conciliation Officer. It was denied that a false and fabricated chargesheet was issued by the Management. It was pleaded that the claimant did not submit his explanation to both the chargesheets dated 29th April, 1980 and 15th September, 1980 inspite of repeated opportunities given to him. It was pleaded that an independent person was appointed as Enquiry Officer and that the claimant participated in the enquiry upto 15th March, 1981 and that the Enquiry Officer allowed the claimant to bring any co-worker to represent him in the enquiry, but he did not give the name of any co-worker. It was pleaded that Shri Babu Khan was suspended from duty and, as such, the claimant was not allowed to be represented by Shri Babu Khan. It was pleaded that on 15th March, 1981 the claimant appeared in the enquiry and stated that temporary injunction had been granted against the Enquiry Officer and the Management, but he did not file any copy of the order, but on the other hand, the Management produced a copy of order passed by the Hon'ble Court in which it was mentioned that the enquiry be continued. It was pleaded that the claimant withdrew himself from the enquiry, which was held ex-parte and that on receipt of the report from the Enquiry Officer, the claimant was dismissed on 17th June, 1981, which order was legal.

4. The claimant in his rejoinder dated 14th September, 1982 reiterated the pleas taken in the claim statement.

5. On the pleadings of the parties, the following issues were framed on 14th September, 1982 :--

- (1) Whether the demand was sent direct on the Management ? If so, to what effect ? OPM

(2) Whether the domestic enquiry is fair and proper? OPM

(3) Whether the dismissal of Shri Udey Singh Rawat was justified and in order? If not, to what relief is he entitled?

6. It may be mentioned that the Management examined two witnesses and documents, Exhibit M-1 to M-73, have been tendered into evidence. The claimant has examined two witnesses and documents, Exhibit W-1 to W-24, have been tendered into evidence. After going through the entire evidence and hearing the representatives of both the parties, my findings on the above issues are as under :--

Issue No. 1

It was argued by the representative of the Management that the claimant had not served the demand notice on the Management but on the other hand, the same was sent directly to Conciliation Officer. It was submitted by MW-1 Shri A.S. Sethi that the demand notice was received by the Management through the Conciliation Office. Reliance was placed on the ruling reported as **New Delhi Tailoring Mazdoor Union and Co. (P) Etc. 1979(3) F.L.R. page 195**, in which it is laid down that a mere demand to the Government with a dispute being raised by the workmen with the employer cannot become an industrial dispute. The second ruling is **Fedders Lloyed Corporation Private Ltd. and Lieutenant Governor, Delhi and others, 1970(2) F.L.R. 343** in which it is laid down that the demand by the workmen and rejection by employer was necessary and that the demand on Conciliation Officer and its communication by him was not sufficient. The third ruling is the **Sindhu Resettlement Corporation Ltd. V. The Industrial Tribunal of Gujarat and Ors. 1963(1) S.C.R. page 515**, in which it is laid down that a mere demand to the Government without a dispute being raised by the workmen with their employer cannot become an industrial dispute. The representative of the claimant has placed reliance on the ruling reported as **Shambu Nath Goyal and Bank of Baroda, Jullundur, 1978-I-L.L.J. 484**, in which, it is laid down that making a demand for reinstatement is not a *sine-quo-non* for an industrial dispute to come into existence. In the latest ruling reported **M/s. Rama Krishna Mills (Coimbatore) Ltd. Genapathy Fost, Coimbatore and the Government of Tamil Nadu Etc. 1984-II-LLJ, page 259**, in which a large number of previous rulings have been considered, it was held that a written demand on the Management is not in all cases a *sine-quo-non* and that there must arise a dispute or difference within the meaning of the Industrial Disputes Act, 1947, and that the talks and discussions before the Assistant Commissioner of Labour related to the order of dismissal and the demand to set them at naught and taken back the workmen. It was held that the demand as such need not in all cases be directly made by a representation to the Management and the demand could be made through other sources also. In the present case, the demand notice was addressed to the Management and in any case it was received by the Management from the Conciliation Officer when the conciliation proceedings took place and as such the reference cannot be said to be invalid. The issue is decided accordingly against the Management.

Issue No. 2

8. Exhibit M-2 is the copy of the chargesheet dated 29th August, 1980, in which it was alleged that on 27th August, 1980 at about 9.00 a.m. the claimant stopped the normal work and left the place without any permission and came out of the place alongwith others to the Administrative Block for taking the matter regarding the involvement of a few individual workers in an incident outside the premises of the plant and not only intimidated, but also used abusive language to the members of the Management and created an ugly scene. It was further alleged that on 27th August, 1980, the claimant alongwith other workers resorted to tool down strike since 1.00 p.m. without any valid ground and instigated the other workers to do so. In the charge-

sheet dated 15th September, 1980 (Exhibit M-3); it was alleged that on 3rd September, 1980 at about 8.20 a.m., the claimant alongwith other workers abused the workmen who are willing to work and also indulged in brick-bating from outside the factory.

9. The Management has examined MW-2 Shri Shambu Dayal Sharma who stated that he was appointed as an Enquiry Officer in this case,--vide letter Exhibit M-1 and received the copies of the chargesheets, Exhibit M-2 and M-3 and issued notices to the parties. He further stated that he held the enquiry against the claimant and that Exhibit M-4 contained the enquiry proceedings. He further stated that he submitted his report, Exhibit M-5 and that document, Exhibit M-6 to M-50 were produced during enquiry. The documents, Exhibit M-64 to M-71 were produced by this witness. MW-1 Shri Ajit Singh Sethi, Personnel Manager of the Respondent Factory stated that previously there were two Unions in the respondent Company, namely, Remington Employees Union and Remington Rand Karamchhari Union. He further stated that a settlement took place with Remington Employees Union copy, Exhibit M-51 and that all the workers took benefit under the said settlement including the claimant,--vide documents, Exhibit M-52 to M-55. He then stated that Remington Rand Karamchhari Union had served a demand notice which was rejected by the Government, copies Exhibit M-56 to M-58, and that writ petition was filed by the said Union which was dismissed,--vide judgement copy, Exhibit M-59. He further stated that the letters, Exhibit M-60 to M-62 were written to the Union. The letter, Exhibit M-63 was written to the Labour Commissioner. The documents, Exhibit M-72 to M-73 were tendered into evidence. The documents Exhibit W-1 to W-16 were proved by the claimant in cross examination of this witness.

10. The claimant have examined WW-1 Shri Babu Khan, who stated that the claimant was a Propaganda Secretary/Joint Organising Secretary in Remington Rand Karamchhari Union. He further stated that a settlement took place on 29th January, 1979, copy Exhibit W-8 and that letters, Exhibit W-9 to W-19 were written by the Union to the Management and other authorities while Exhibit W-20 was the copy of the order passed by the Registrar of the Trade Union. He then stated that the Management arrived at a settlement with the other Union known as Remington Employees Union, due to which protest was lodged by the Remington Rand Karamchhari Union. He further stated that due to that grudge the claimant as well as five other office bearers of the Union were turned out by the Management. He then stated that copy of the enquiry report was not supplied by the Management. He also stated that the enquiry proceedings were stayed, but no further date was given by the Enquiry Officer and that list of witnesses was not given by the Enquiry Officer. He also stated that all the facilities were denied to the claimant because the management was pre-determined to dismiss the claimant due to his trade union activities. WW-2 Shri Uday Singh claimant stated that he was employed by the respondent in July, 1975, as Press Operator and was getting Rs. 475/- per month when his services were terminated. He further stated that Shri S.D. Sharma was appointed as Enquiry Officer, who did not supply the list of witnesses and that his prayer to change the Enquiry Officer was turned down. He further stated that he was not allowed to be represented by Shri H.R. Dug, Shri Dalip Singh and Shri Babu Khan. He further stated that he was a protected workman. He further stated that facilities demanded by him were not granted to him by the Enquiry Officer. The claimant has also proved the documents, Exhibit W-21 to W-24.

11. A perusal of the above evidence would show that chargesheets copies, Exhibit M-2 and M-3 were given to the claimant but he did not give his explanation. Shri Shambu Dayal Sharma was appointed as Enquiry Officer to hold the enquiry. Exhibit M-4 contains day-to-day proceedings of enquiry which show that the claimant participated in the enquiry upto 15th March, 1981, but he left the place of the enquiry on that date because the Enquiry Officer asked him to produce the copy of the stay order if any granted by learned Civil Court which was not produced by him. The Enquiry Officer proceeded *ex parte* against him and examined three witnesses. Four witnesses were examined by the Enquiry Officer on 16th March, 1981. This document shows that

the Enquiry Officer gave an opportunity to the claimant to participate in the enquiry on 12th May, 1980 and wrote the letter, dated 3rd May, 1981, Exhibit M-71 but the same was received back with the report that the claimant had left the place without address. The Enquiry Officer had got published a notice in 'Bharat Darshan' Daily newspaper for 17th May, 1981. Copies of the said notices were pasted on the notice board at the gate of the factory, but the claimant did not appear in the Enquiry. Consequently the **ex parte** enquiry was again held against the claimant. The Management examined Shri J.R. Ratra, Shri Lalit Kumar, Shri S.K. Sen Gupta, Shri R.S. Gera, Shri Bala Ram, Shri S.K. Gambhir, Shri Allah Mehar, Shri J.L. Rajpal, Shri Megh Raj Singh, Shri Hari Narain, Shri Mishri Lal, Shri Keshar Singh, Shri Ghanshyam Sharma, Shri Brijan Singh, Shri Avadh Narain Mishra, R.S. Bhatia and Shri A.K. Mukerjee and closed the enquiry on 31st May, 1981 and submitted his enquiry report, Exhibit M-5 in which testimony of all the witnesses was referred to and it was found that the claimant was guilty of the charges framed against him.

12. It was argued by the representative of the workman that the Enquiry Officer held **ex-parte** enquiry illegally against the claimant and as such, the same was vitiated. Reliance has been placed on the rulings reported as **M/s Khardhah and Co. Ltd. V. The Workmen**, AIR, 1964 Supreme Court 719; in which, it is laid down that evidence must be led in the presence of the workmen. The second ruling is **Tripathi, K.L. and State Bank of India and Ors**, 1984-1-LLJ, page 2, in which it is laid down that, if the evidence was not recorded in the presence of the delinquent employee, the enquiry was vitiated. Both these rulings are distinguishable on facts because in the present case, the claimant himself walked out from the enquiry on 15th March, 1981 and thereafter another opportunity was given to him for 12th May, 1981. The letter was received back with the remarks that he had left the place without any address and again an opportunity was given to him for 17th May, 1981 by publication in the Newspaper and pasted a copy of the letter on the notice board to that effect, but the claimant did not appear and as such **ex parte** proceedings were ordered against him by the Enquiry Officer. In the ruling reported as **Grompton Greaves Ltd. Bombay and Shri S.W. Shinde** 1974(28) F.L.R. page 80, it is laid down that where there was intentional absence of workman on date fixed for holding enquiry, the enquiry was justified. In ruling reported as **Major U.R. Bhatt V. Union of India**, Volume 21 F. J.R. 478, it is laid down that where the employee refused to take part in enquiry proceedings, the enquiry officer could proceed on the materials which were placed before him. In the ruling reported as **Lakshmi Devi Sugar Mills Ltd. V. Pt. Ram Sarup**, 1956 S.C.R. 916, it is laid down that where the full and free opportunity was given to the worker to be present and defend himself in duly notified enquiry and he failed to do so, the Management was quite within its rights to come to its own conclusion. For the reasons given above, the **ex parte** enquiry held against the claimant does not stand vitiated. The argument has no force.

13. It was then argued by the representative of the workmen that the claimant was not allowed to be represented by Shri Babu Khan, Shri H.R. Dua and Shri Dalip Singh. The Enquiry Officer allowed the claimant to bring a co-worker in the enquiry as per clause 22(3) of the Certified Standing Orders of the Company. The Enquiry Officer dealt with this point and held that Shri H.R. Dua and Shri Dalip Singh were outsiders, while Shri Babu Khan was under Suspension and as such the claimant could not be allowed to be represented by these persons. In the ruling reported as **N. Kalindi and others V. M/s. Tata Locomotive and Engineering Co. Ltd.**, Jamshedpur, 1959-67(4) S.C.L.J. 2721. It is laid down that in a domestic enquiry the claimant was not entitled to be represented by a member of the Union. In the ruling reported as **Haridas Malakar and others and Joy Engineering Works** 1975-II-LLJ page 26, it is laid down that there was no violation of the principles of natural justice simply because the workman was not allowed to represent his case before the domestic enquiry by a suspended co-workman of his choice. The representative of the workman placed reliance on the ruling reported as **Best Kamgar Union and Bombay Electric Supply and Transport Under-**

taking and others, 1985(59) F.L.R. page 33. This ruling is distinguishable on facts because the same related to the provisions of Section 22(ii) of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971, which clearly confers right upon an unrecognised Union to appear on behalf of any of its members in any domestic enquiry. As already mentioned above the Certified Standing Orders of the Company permitted only co-workman to represent him in the domestic enquiry. The second ruling is **The Board of Trustees of the Port of Bombay and Dilip Kumar Raghavendranath Nadkarni and others** 1983(46) F.L.R. page 80; which is also distinguishable on facts because the same relates to Regulation 12(B) of the Bombay Port Trust Employee's Regulations, 1976, which permitted a claimant to engage a legal practitioner if a presenting officer appointed by the disciplinary authority was a legal practitioner. The Certified Standing Orders of the respondent Company only permit a co-workman to represent a claimant in the domestic enquiry. Consequently, the argument has no force.

14. It was then argued that the list of witnesses were not supplied to the claimant on 11th December, 1980. Reliance was placed on the ruling reported as **Pandah Bissoyi and others V. Magiti Sasamal**, AIR-1957 Orissa 17, in which, it is laid down that the names of witnesses be intimated to the person proceeded against. The claimant had made prayer for supply of list of witnesses, but he walked out from the place of enquiry on 15th March, 1981 and again did not appear on 12th May, 1981 and 17th May, 1981 inspite of registered letter having been sent to him and the publication having been made in the Newspaper. This ruling, therefore, does not help the claimant because he absented himself with effect from 6th March, 1981. In an *ex parte* enquiry, the question of cross-examining the witnesses did not arise.

15. It was then argued that the claimant was victimised being Propaganda Secretary/Joint Organising Secretary of the Union. As already mentioned above, the claimant was chargesheeted and domestic enquiry was held against him. Consequently, the proceedings were not initiated against him merely because he was Propaganda Secretary of the Union. In the ruling reported as **Anand Bazar Patrika (P) Ltd. V. Its Workmen** 1964(3) S.C.R. page 601, it is laid down that the inference as to victimisation should be drawn only where the evidence has been led to justify it. In the ruling reported as **M/s. Bharat Iron Works V. Bhagubhai Balubhai Patel and others**, 1976 S.C.C. (L&S) page 92, it is laid down that onus of establishing a plea of victimisation will be upon the person pleading it. In the ruling reported as **Employees in relation Colliery and their Workmen**, 1950-67(2) Supreme Court Labour Judgements 876, it is laid down that where on the question of victimisation no evidence was led on behalf of the employee, the finding of the Tribunal on this point is vitiated in law. The argument is without any force because the Management chargesheeted and held enquiry against the claimant with regard to the charges contained in the chargesheets, Exhibit M-2 and M-3 and as such it cannot be held that the claimant was victimised.

16. It was argued that no second show cause notice was given to the claimant. Reliance was placed on the ruling reported as **State of Maharashtra and Baishankar Avalram Joshi and another** 1979(20) F.L.R. 289, in which, it is laid down that failure to supply the copy of report of the Enquiry Officer to the delinquent Government servant amounted to denial of reasonable opportunity within Article 311(2) of the Constitution. This ruling is distinguishable on facts because the same relates to the Government Servant who is governed by Article 311(2) of the Constitution and these provisions are not applicable to the present case. Second ruling is **Messrs Lakshiratan Cotton Mills Co. Ltd. and Its Workmen**, 1976-II-L.L.J. 174, in which it is laid down that where there was a failure to give adequate opportunity to show cause against proposed punishment, it amounted to violation of clause (1) of Standing Orders 26. This ruling is distinguishable on facts because the same relates to differ-

ent standing orders and the provisions of U.P. State's Industrial Disputes Act, 1947 applied to that case. In the Standing Order of the respondent company, it is nowhere laid down that second show cause should be given to the delinquent.

17. It was argued that the enquiry Officer was not an independent person and as such the enquiry was vitiated. The argument does not carry any weight because the Enquiry Officer dealt with the objections raised by the claimant during the enquiry, but later on, the claimant absented himself and did not participate in the enquiry. He even did not submit his explanation to the charges.

18. In view of the above discussion, it is held that the Enquiry was fair and proper. The issue is decided accordingly in favour of the Management.

Issue No. 3

19. As already mentioned above, the enquiry was fair and proper and no interference in the findings of the Enquiry Officer is called for because the findings are based on evidence and the Enquiry Officer has referred the testimony of 25 witnesses produced before him by the Management in the enquiry. The claimant did not care to give his explanation to the chargesheets and later on absented himself, due to which *ex parte* enquiry was held against him.

20. It was argued by the representative of the workman that the punishment given to the claimant was harsh and disproportionate to the misconduct attributed to him. It was argued that the Management had taken lenient view in case of other workers who were alleged to have committed the same act, but a strict view was taken in case of punishment regarding the claimant because he was Propaganda Secretary of the Union. It was argued by the representative of the Management that punishment awarded to the claimant was proportionate to the acts committed by him. The Management has placed reliance on the rulings reported as *Pure Drinks (Private) Ltd. and Kirat Singh Maungatt and another*, 1961(3) F.L.R. 46, *The Calcutta Jute Mfg. Co. Ltd. V. Calcutta Jute Mfg. Workers Union*, 1962(1) S.C.R. 483, *Tata Oil Mills Co. Ltd. V. Its Workmen*, 1964(7) S.C.R. 555 and *Bengal Bhatdee Coal Co. V. Shri Ram Prabesh Singh and Ors.* 1964(1) S.C.R. page 709. All these rulings are distinguishable on facts because the provisions of Section 11-A of the Industrial Disputes Act, 1947 were not dealt with in these cases because these provisions were enacted in 1971.

21. In the ruling reported as *the General Manager, Chandigarh Transport Undertaking Chandigarh V. Ranjit Singh and another* 1982-Lab. I.C. 604, it is laid down that Industrial Tribunal could interfere with the punishment under Section 11-A of the Industrial Disputes Act, 1947 only if it was so harsh as to suggest victimisation. In the ruling reported as *Sarabhai M. Chemicals (S.M. Chemicals and Electronics) Ltd. and M.S. Ajmere and another* 1980-I.L.L.J. page 295, it is laid down that under Section 11-A of the Industrial Disputes Act, 1947, the Tribunal can interfere with the punishment if the same is excessive and shockingly disproportionate. In the ruling reported as *The East India Hotels V. their Workmen and others*, 1974-Lab. I.C. 532, it is laid down that the Industrial Tribunal can interfere with the punishment under Section 11-A of the Industrial Disputes Act, 1947, if the same is harsh and oppressive. In the ruling reported as *M/s. Godfrey Phillips India Ltd. and Manik Vasudeo and other*, 1973-I.L.L.J. 278, it is laid down that Tribunal can interfere with the punishment where the same is so harsh as to suggest victimisation. In the present case, the claimant has been dismissed along with office bearers of the Union, but, the other workers, who had committed the same acts have been taken back in service by the Management because they tendered apology. It is thus apparent that the Management deemed it proper to reinstate the other workers on their tendering apology. The Management has discretion while awarding the punishment, but once the Management decided to reinstate a large number of persons for these acts of misconduct, it cannot

discriminate the case of the claimant merely because he was Propaganda Secretary of the Union. It cannot be held that punishment of dismissal would be fair in the case of the claimant because he is Propaganda Secretary of the Union and that re-instatement of the other workers was fair because they were not office bearers of the Union. In case of punishment for similar acts, same principles have to be applied. Under these circumstances, the punishment of dismissal awarded to the claimant cannot be upheld being harsh and oppressive and as such the impugned order of dismissal against the claimant is set aside. The end of justice would be met if the claimant is reinstated but he is deprived of his back wages for his acts of misconduct. The award is passed accordingly.

Dated 2nd December, 1985.

R.N. BATRA,
Presiding officer,
Industrial Tribunal, Haryana,
Faridabad.

Endst. No. 946, dated 4th December, 1985.

Forwarded (four copies) to the Commissioner and Secretary to Government Haryana, Labour and Employment Departments, Chandigarh as required under Section 15 of the Industrial Disputes Act, 1947.

R.N. BATRA,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

No. 9/5/84-6Lab./10700.--In pursuance of the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding officer, Industrial Tribunal, Faridabad in respect of the dispute between the workman and the management of M/s. Remington Rand of India Limited, Plot No. 3, Sector 6, 20/7, Mathura Road, Faridabad.

BEFORE SHRI R.N. BATRA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA,
FARIDABAD

Reference No. 40/1982

Between

SHRI SADAKAT HUSSAIN WORKMAN AND THE MANAGEMENT OF M/S. REMINGTON RAND OF
INDIA LIMITED, PLOT NO. 3, SECTOR 6, 20/7, MATHURA ROAD, FARIDABAD

Present :

Shri H.R. Dua for the workman.

Shri R.N. Rai for the Management.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana referred the following dispute between Shri Sadakat Hussain Workman and the Management of M/s Remington Rand of India Limited, Plot No. 3, Sector 6, 20/7, Mathura Road, Faridabad, to this Tribunal for adjudication :--

Whether the termination of service of Shri Sadakat Hussain was justified and in order? If not, to what relief is he entitled?

2. Notices were issued to both the parties. The claimant in his demand notice alleged that the Management was an international concern and was having one factory at Calcutta and other factory at Faridabad and had several offices in different parts of the country. It was further alleged that the claimant was employed as Polisher in Faridabad factory on temporary basis, but was later on confirmed and was drawing wages at the rate of Rs. 450/- per month. It was alleged that the service of the claimant was governed by the Certified Standing Orders, but the conditions of the workmen employed at Faridabad were poor in comparison to the workmen employed at Calcutta, due to which the workers at Faridabad formed a Trade Union titled as Remington Rand Karamchhari Union, which was registered with the Registrar, Trade Unions and that the claimant was elected President of the said Union. It was further alleged that on 12th March, 1981, the names of the office bearers and protected workmen were informed to the respondent Company by the Union and that 5 workmen were accepted as protected workmen on 5th May, 1979 by the Management. It was alleged that on 29th January, 1979, the Management entered into settlement, but the said settlement was not implemented by the Management, due to which the matter was reported to Deputy Labour Commissioner by the Union, but ultimately no action was taken and that the Management did not relish the activities of the office bearers of the Union. It was further alleged that the Union terminated the settlement,--vide notice dated 20th February, 1979 and also served a charter of demand, but the Management did not negotiate and the Union took up the matter with the Labour-cum-Conciliation Officer, Sector 7, Faridabad, who issued notice to the parties and that the Management did not produce the relevant documents before that Officer. It was further alleged that the Management arrived at settlement with some puppet employees in the name of the Remington Rand Employees Union. It was further alleged that the Management inflicted all types of atrocities on the members of the Remington Rand Karamchhari Union and declared lock out in the factory which action of the Management was challenged by the Union. It was further alleged that the Management was determined to terminate the services of the claimant on one pretext or the other due to his trade union activities and served the claimant with false and fabricated chargesheet and appointed Shri S.D. Sharma as Enquiry Officer, whose appointment was objected to by the claimant, but the Management declined to change the Enquiry Officer, due to which the claimant filed a Civil Suit. It was further alleged that the request of the claimant to be represented through the Office bearers of the Union was not accepted. It was alleged that the stay order obtained in the civil suit was vacated, but the Enquiry Officer did not give any notice to the claimant and conducted the enquiry *ex-parte*. It was also alleged that the Enquiry Officer did not obey the restrain to order of the Civil Court regarding which the petition was filed against him in the Civil Court. It was further alleged that the enquiry conducted by the Enquiry Officer was fake and that the order terminating the services of the claimant on the basis of the findings of the Enquiry Officer was illegal. It was, therefore, prayed that the claimant be reinstated with full back wages.

3. The Management in its written statement dated 11th March, 1982 pleaded that the claimant sent the demand notice directly to the Conciliation Officer and no industrial dispute was raised with the Management, and, consequently, no industrial dispute existed between the parties. It was further pleaded that the Company had two factories, one at Calcutta and the other at Faridabad, and sales Offices throughout the Country. It was admitted that the claimant was a confirmed employee and was getting Rs. 450/- per month inclusive of all allowances as wages. It was further pleaded that no comparison could be made with regard to the service conditions of the persons employed in Calcutta Unit of the Company because the Unit at Faridabad was set up in 1975 and was manufacturing portable type-writers, the demand of which was limited,

whereas the unit at Calcutta was engaged in the manufacture of standard typewriters and was a profitable unit. It was pleaded that the Unit at Faridabad was an independent and separate unit. It was admitted that a settlement dated 29th January, 1979 was arrived at between the parties and that the claimant was one of the signatories. It was further pleaded that there was some difficulty in introducing final (revised) incentive scheme in terms of the settlement dated 29th January, 1979 for which negotiations with the Union/Labour Department took place. It was further pleaded that the said settlement was to expire on 31st March, 1980, but the Remington Rand Karamchari Union served a termination notice dated 22nd February, 1979, which was rejected by the Labour-cum-Conciliation Officer. It was pleaded that after the expiry of the said settlement, the said Union submitted a demand notice dated 28th April, 1980. It was further pleaded that another Union by the name of Remington Rand Employees Union existed even prior to the formation of Remington Rand Karamchari Union and that the Management signed the tripartite settlement dated 5th December, 1977 with the Remington Rand Employees Union, which Union also gave a notice of termination of the settlement, --vide letter dated 6th February, 1980 and submitted a fresh charter of demand dated 11th February, 1980 and another charter of demand dated 29th July, 1980. It was pleaded that Remington Rand Karamchari Union and its members resorted to go slow in production and subversive activities of discipline involving the violence inside and outside the factory, due to which the Management had to resort to temporary suspension of manufacturing activities. It was pleaded that a conciliation settlement dated 6th August, 1980 was arrived at between the Management and Remington Rand Employees Union, due to which all the workmen joined their duties. It was pleaded that the claimant was dismissed from service on account of charges of major misconduct committed by him and that in the first instance, he was served with two chargesheets and domestic enquiry was instituted. It was pleaded that the claimant participated in the enquiry upto 6th March, 1981 and thereafter he started evading the enquiry on one pretext or other and also file the civil suit for injunction against the Enquiry Officer and the Management, due to which the Enquiry Officer kept the enquiry in abeyance till the matter of injunction was disposed of by the Civil Court. It was pleaded that the Enquiry Officer resumed the enquiry proceedings with effect from 10th May, 1981 after the injunction order was vacated by the Civil Court and intimated the claimant to participate in the enquiry. It was pleaded that a letter dated 3rd May, 1980 was sent to the claimant by registered A.D. post, but the claimant was not acknowledging letters of the Enquiry Officer, due to which the Enquiry Officer got published the notice of enquiry fixing the enquiry on 17th May, 1980, and that the said notice was published in the local newspaper 'Bharat Darshan'. Since the claimant failed to appear in the enquiry, **ex-parte** proceedings were ordered against him and **ex parte** enquiry was held. It was denied that the Enquiry Officer disobeyed the order of the Civil Court, but, on the other hand, he resumed the enquiry after the stay order was vacated. It was further pleaded that the claimant was allowed to be represented by any co-worker as provided in the Standing Orders of the Company, but he did not give the name of his representative. It was pleaded that the claimant was not allowed to be represented by Shri Babu Khan, who had been suspended from duty. It was pleaded that after completing the **ex-parte** enquiry, the Enquiry Officer submitted his report. It was also pleaded that the claimant was dismissed from service with effect from 15th June, 1981 on the basis of the said report and that the order of dismissal was legal.

4. The claimant in his rejoinder dated 10th June, 1982 reiterated the pleas taken in the claim statement.

5. On the pleadings of the parties, the following issues were framed on 10th June, 1982 :--

- (1) Whether demand notice was sent to the Management ? If not, to what effect ? OPM

(2) Whether the domestic enquiry was fair and proper ? OPM

(3) Whether the workman was a protected workman ? If so, to what effect?
OPA

(4) Whether the termination of service of Shri Sadakat Hussain was justified and in order ? If not, to what relief is he entitled ? OPM

6. It may be mentioned that the Management has examined two witnesses and documents, Exhibit M-1 to M-70, have been tendered into evidence. The claimant has examined two witnesses and documents, Exhibit W-1 to W-29, have been tendered into evidence. After going through the entire evidence and hearing the representatives of both the parties, my findings on the above issues are as under :--

Issue No. 1:

7. It was argued by the representative of the Management that the claimant had not served the demand notice on the Management, but, on the other hand, the same was sent directly to the Conciliation Officer. It was submitted by MW-1 Shri A.S. Sethi that the demand notice was received by the Management through the Conciliation Office along with letter, Exhibit M-13. Reliance was placed on the ruling reported as **New Delhi Tailoring Mazdoor Union and S.C. Sharma & Co.(P) Ltd. Etc.** 1979(39) F.L.R. page 195, in which it is laid down that a mere demand to the Government without a dispute being raised by the workmen with their employer cannot become an industrial dispute. The second ruling is **Fedders Lloyd Corporation Private Ltd. and Lieutenant Governor, Delhi and others**, 1970(20) F.L.R. page 343, in which it is laid down that the demand by the workmen and rejection by employer was necessary and that the demand on Conciliation Officer and its communication by him was not sufficient. The third ruling is **The Sindhu Resettlement Corporation Ltd. V. The Industrial Tribunal of Gujarat & Ors.** 1968(1) S.C.R. page 515, in which it is laid down that a mere demand to the Government without a dispute being raised by the workmen with their employer cannot become an industrial dispute. The representative of the claimant has placed reliance on the ruling reported as **Shambu Nath Goyal and Bank of Baroda, Jullundur**, 1978-I.L.L.J. 484, in which it is laid down that making a demand for reinstatement is not a *sine-quo-non* for an industrial dispute to come into existence. In the latest ruling reported as **M/s. Rama Krishna Mills (Coimbatore) Limited Genapathy Post, Coimbatore and the Government of Tamil Nadu Etc.** 1984-II-Ltj page 259, in which a large number of previous rulings have been considered, it was held that a written demand on the management is not in all cases a *sine-quo-non* and that there must arise a dispute or difference within the meaning of the Industrial Disputes Act, 1947, and that the talks and discussions before the Assistant Commissioner of Labour related to the order of dismissal and the demand to set them at naught and take back the workmen. It was held that the demand as such need not in all cases be directly made by a representation to the Management and the demand could be made through other sources also. In the present case, the demand notice was addressed to the Management and in any case it was received by the Management from the Conciliation Officer when the conciliation proceedings took place and as such the reference cannot be said to be invalid. The issue is decided accordingly against the Management.

Issue No.-2

8. Exhibit M-17 is the copy of the chargeshheet dated 29th August, 1980, in which it was alleged that on 27th August, 1980, at about 9.10 a.m., the claimant stopped his normal work and left the place without any permission and came out of the plant alongwith others to the Administrative Block for taking the matter regarding the involvement of a few individual workers in an incident outside the premises of the plant and not only intimidated, but also used abusive language to the members

of the Management and created an ugly scene. It was further alleged that on 27th August, 1980, the claimant alongwith other workers resorted to tool down strike since 1.00 p.m. without any valid ground and instigated the other workers to do so. In the chargesheet dated 15th September, 1980 (Exhibit M-20), it was alleged that on 3rd September, 1980 at about 8.20 a.m., the claimant alongwith other workers abused the workmen, who are willing to work, and also indulged in brick-bating from out-side the factory.

9. The Management has examined MW-2 Shri Shambu Dayal Sharma who stated that he was appointed as an Enquiry Officer,--vide letter Exhibit M-16 alongwith chargesheets, Exhibit M-17 and M-20 with their Hindi Translation and issued notices to the parties. He further stated that the claimant participated in the enquiry upto 1st March, 1981 and that Exhibit M-23 was the enquiry proceedings. He further stated that the documents, Exhibit M-24 to M-68 were produced during the enquiry and that the enquiry report, Exhibit M-70 was sent by him alongwith his letter Exhibit M-69. MW-1 Shri Ajit Singh Sethi, Personnel Manager, stated that there were two Unions in the factory, namely, 'Remington Rand Employees Union and Remington Rand Karamchhari Union' and that a settlement took place with the Remington Rand Employees Union on 6th August, 1980 copy, Exhibit M-1, when all the workers were given benefit including the claimant,--vide documents, Exhibit M-2 to M-4. He further stated that the demand raised by Remington Rand Karamchhari Union was rejected by the Government,--vide letters M-5 to M-7 and that a writ petition was filed against the rejection order copy, Exhibit M-8. He further stated that the letters, Exhibit M-9 to M-11 were written by the Management to the Remington Rand Karamchhari Union, while, Exhibit M-12 was the copy of the letter written to the Labour Commissioner, Haryana. He further stated that, Exhibit M-14 contained the Certified Standing Orders of the Company and that on receipt of the report of the Enquiry Officer, the claimant was dismissed,--vide order, Exhibit M-17. In cross-examination, he admitted that the letters, Exhibit W-1 to W-10 were received from the Union.

10. The claimant has examined WW-1 Shri Babu Khan who stated that he was General Secretary of the Remington Rand Karamchhari Union, while the claimant was the President of that Union. He further stated that he used to sign the documents on behalf of the Union and that office bearers were the protected workmen. He proved the letters, Exhibit W-1, W-3, W-15 written by the Union in connection with the settlement, Exhibit M-16. He stated that the incentive scheme was not implemented by the Management and that attitude of the Management towards the office bearers of the Union was hostile and that notice to terminate the settlement was given by the Union copy, Exhibit M-17 and thereafter the demand notice, Exhibit W-18 was given by the Union. He further stated that the Management entered into fresh settlement with the other Union and that the objections were filed by their Union copy, Exhibit W-19. He also stated that the claimant was dismissed by the Management due to revengeful spirit being the President of the Union. Shri Sadakat Hussain claimant appeared as WW-2, who stated that he was the President of Remington Rand Karamchhari Union. He further stated that the charter of demand was given by his Union, but no settlement could be arrived at and that the Management terminated his service in revengeful spirit. He then stated that the enquiry was held against him and that he had raised objection on the appointment of Shri S.D. Sharma as Enquiry Officer and filed a civil suit in that respect. He also stated that he demanded certain facilities from the Enquiry Officer and that he be allowed to be represented by Shri Babu Khan, Shri K.N. Joshi, Shri H.R. Dua and Shri Dalip Singh but his request was not acceded to. He further stated that the list of witnesses was not supplied to him and that no intimation was sent to him by the Enquiry Officer regarding holding of the enquiry, when the said order was vacated. He further stated that the copy of the enquiry report was not given to him. He further stated that the letters, Exhibit W-23 to W-28 were written by him as President of the Union and that M-29 contained the conciliation report.

11. A perusal of the above evidence would show that the claimant was charge-sheeted,--vide chargesheets, Exhibit M-17 and M-20 but the claimant did not submit any explanation to the chargesheets. Shri Shambu Dayal Sharma was appointed as Enquiry Officer to enquire into the charges. Exhibit M-23 contained the day to day proceedings of the enquiry while, Exhibit M-70 is the enquiry report submitted by him. These documents show that the claimant appeared in the enquiry proceedings upto 6th March, 1981, on which date one witness of the Management Shri A.S. Sethi was partly examined, and the enquiry was adjourned to 8th March, 1981, but the claimant did not appear and as such ex-parte proceedings were ordered against him. Thereafter the Enquiry Officer examined the witnesses of the Management ex-parte namely Shri A.S. Sethi, Shri Sittal Parshad and Shri Ram Surat Yadav and the enquiry was then adjourned to 18th May, 1981. The Enquiry Officer had sent the letter dated 3rd May, 1981, Exhibit M-61 by registered post,--vide postal receipt, Exhibit M-63. This letter was addressed to the claimant at 28 Neelam Chowk, N.I.T. Faridabad which was returned by the postal authority with the remarks that the claimant had left the place without address. The Enquiry Officer gave another opportunity to the claimant for 17th May, 1981 by getting the notice published in the daily News Paper 'Bharat Darshan', Exhibit M-62. Copies of the said notices were pasted on the notice board at the gate of the factory, but the claimant did not appear on 17th May, 1981. The Enquiry Officer then examined Shri Jhuri Lal, Shri Allah Mehar, Shri J.L. Rajpal, Shri Beli Ram, Shri Megh Raj, Shri J.R. Ratra, Shri Kessar Singh, Shri Ghanshyam Sharma, Shri Hari Narain, Shri Y.P. Sharma, Shri S.K. Sen Gupta, Shri J.K. Dubey, Shri Vijay Pal Singh, Shri R.S. Gera, Shri S.K. Gambhir, Shri Mishri Lal, Shri K.K. Bose, Shri P.N. Choudhary, Shri Vigyan Singh, Shri Avadh Narain Mishra, Shri R.S. Bhatia and Shri A.K. Mukerjee and ex-parte enquiry was closed on 31st May, 1981. The Enquiry Officer then submitted his report, Exhibit M-79 in which entire evidence produced by the Management has been recorded and found the claimant guilty of the charges levelled against him. The Enquiry Officer has based his findings on the evidence led before him.

12. It was argued by the representative of the workman that the Enquiry Officer held the ex-parte enquiry illegally against the claimant and as such, the same was vitiated. Reliance has been placed on the rulings reported as M/s Khardhah and Co. Ltd. V. The Workmen, AIR-1964 Supreme Court 719, in which it is laid down that evidence must be led in the presence of the workmen. 2nd ruling is Tripathi, K.L. and State Bank of India and Ors., 1984-1-L.L.J. page 2, in which, it is laid down that if the evidence was not recorded in the presence of the delinquent employee, the enquiry was vitiated. Both these rulings are distinguishable on facts because in the present case, the claimant himself did not appear on 8th March, 1981 when the ex-parte proceedings were ordered against him and thereafter another opportunity was given to him for 10th May, 1981 and 17th May, 1981 as already mentioned above, but the claimant did not avail of this opportunity. In the ruling reported as 1974(28) F.L.R. page 80 (Crompton Greaves Ltd. Bombay V. S.W. Shinde), it is laid down that where there was international absence of workman on date fixed for holding enquiry, the enquiry was justified. In the ruling reported as Major U.R. Bhatt V. Union of India, Volume 21 F.J.R. 478, it is laid down that where the employee refused to take part in enquiry proceedings the Enquiry Officer could proceed on the materials which were placed before him. In the ruling reported as Lakshmi Devi Sugar Mills Ltd. V. Pt. Ram Sarup, 1956 S.C.R. 916, it is laid down that here full and free opportunity was given to the worker to be present and defend himself in duly notified enquiry and he failed to do so, the Management was quite within its rights to come to its own conclusion. For the reasons given above, the ex-parte enquiry held against the claimant does not stand vitiated. The argument has no force.

13. It was then argued by the representative of the workmen that the claimant was not allowed to be represented by Shri Babu Khan, Shri H.R. Dua and Shri Dalip Singh. The Enquiry Officer allowed the claimant to bring a co-worker in the enquiry

as per clause 22(3) of the Certified Standing Orders of the Company. The Enquiry Officer dealt with this point and held that Shri H.R. Dua and Shri Dalip Singh were outsiders, while Shri Babu Khan was under Suspension and as such the claimant could not be allowed to be represented by these persons. The claimant did not bring any co-workmen as his representative. In the rulings reported as **N. Kalindi and others M/s Tata Locomotive & Engineering Co. Ltd. Jamshedpur, 1950-67(4) S.C.L.J. page 2721**, it is laid down that in a domestic enquiry the claimant is not entitled to be represented by a member of the Union. In the ruling reported as **Haridas Malakar and others and Jay Engineering Works, 1975-II-L.J. page 26**, it is laid down that there was no violation of the principles of natural justice simply because the workman was not allowed to represent his case before the domestic enquiry by a suspended co-workman of his choice. The representative of the workman placed reliance on the ruling reported as **Best Kamgar Union and Bombay Electric Supply and Transport Undertaking and others, 1985(50) F.L.R. page 33**. This ruling is distinguishable on facts because the same related to the provisions of Section 22(ii) of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971, which clearly confers right upon an unrecognised Union to appear on behalf of any its member in any domestic enquiry. As already mentioned above the Certified Standing Orders of the Company permitted only a co-workman to represent him in the domestic enquiry. The second ruling is **The Board of Trustees of the Port of Bombay and Dilipkumar Raghavendranath Nadkarni and others, 1983(46) F.L.R. page 30**, which is also distinguishable on facts because the same relates to Regulation 12(B) of the Bombay Port Trust Employee's Regulations, 1976, which permitted a claimant to engage a legal practitioner if a presenting officer appointed by the disciplinary authority was a legal practitioner. The Certified Standings Orders of the respondent Company only permit a co-workman to represent a claimant in the domestic enquiry. Consequently, the argument has no force.

14. It was then argued that the list of witnesses was not supplied to the claimant. Reliance was placed on the ruling reported as **Pandab Bissoyi and others V. Magiti Sasamal, AIR-1957 Orissa 17**, in which it is laid down that the names of witnesses be intimated to the person proceeded against. The claimant, however, absented himself with effect from 8th March, 1981 and ex parte enquiry was held against him as already mentioned above. The ruling, therefore, does not help the claimant because he absented himself with effect from 8th March, 1981. In an ex parte enquiry, the question of cross-examining the witnesses did not arise.

15. It was then argued that the claimant was victimised being President of the Union. As already mentioned above, the claimant was chargesheeted and domestic enquiry was held against him. Consequently, the proceedings were not initiated against him merely because he was President of the Union. In the ruling reported as **Anand Bazar Patrika (P) Ltd. V. Its Workmen, 1964 3 S.C.R. page 601**, it is laid down that the findings as to victimisation should be drawn only where the evidence has been led to justify it. In the ruling reported as **M/s Bharat Iron Works V. Bhagubhai Balubhai Patel and others, 1976 S.C.C. (L. & S.) page 92**, it is laid down that onus of establishing a plea of victimisation will be upon the person pleading it. In the ruling reported as **Employees in relation to the Madhuband Colliery and their Workmen, 1950-67(2) Supreme Court Labour Judgements, 876**, it is laid down that where on the question of victimisation no evidence was led on behalf of the employee, the finding of the Tribunal on this point is vitiated in law. The argument is without any force because the Management chargesheeted and held enquiry against the claimant with regard to the charges contained in the chargesheets, Exhibit M-17 and M-20 and as such it cannot be held that the claimant was victimised.

16. It was argued that no second show cause notice was given to the claimant. Reliance was placed on the ruling reported as **State of Maharashtra and Baishankar**

Avalram Joshi and another 1970(20) F.L.R. 289, in which it is laid down that failure to supply the copy of report of the Enquiry Officer to the delinquent Government servant amounted to denial of reasonable opportunity within Article 311(2) of the Constitution. This ruling is distinguishable on facts because the same relates to the Government servant, who is governed by Article 311(2) of the Constitution and these provisions are not applicable to the present case. Second ruling is Messrs Lakshiratan Cotton Mills Co. Ltd. and Its workmen, 1976-II-L.L.J. 174, in which it is laid down that where there was a failure to give adequate opportunity to show cause against proposed punishment, it amounted to violation of clause (1) of the standing order 26. This ruling is distinguishable on facts because the same relates to different standing orders and the provisions of U.P. State's Industrial Disputes Act, 1947 applied to that case. In the standing orders of the respondent Company, it is nowhere laid down that second show cause should be given to the delinquent.

17. It was argued that the enquiry Officer was not an independent person and as such the enquiry was vitiated. The argument does not carry any weight because the Enquiry Officer dealt with the objection raised by the claimant during the enquiry, but later on the claimant absented himself and did not participate in the enquiry. He even did not submit his explanation, to the charges.

18. In view of the above discussion, it is held that the enquiry was fair and proper. The issue is decided accordingly in favour of the Management.

Issue No. 3

19. Exhibit W. 1 is the copy of the letter dated 27th March, 1980 by which Remington Rand Karamchhari Union supplied to the Management the list of protected workmen. The name of the claimant appears in this document and has been described as President of the Union. Consequently, the claimant was a protected workman. The issue is decided accordingly in favour of the claimant.

Issue No. 4

20. As already mentioned above, the enquiry was fair and proper and no interference in the findings of the Enquiry Officer is called for because the findings are based on evidence and the Enquiry Officer has referred to the testimony of 25 witnesses produced before him, by the Management in the enquiry. The claimant did not care to give his explanation to the chargesheet and later on absented himself; due to which *ex parte* enquiry was held against him.

21. It was argued by the representative of the workman that the punishment given to the claimant was harsh and disproportionate to the misconduct attributed to him. It was argued that the Management had taken lenient view in case of other workers, who were alleged to have committed the same acts, but a strict view was taken in case of punishment regarding the claimant because he was President of the Union. It was argued by the representative of the Management that punishment awarded to the claimant was proportionate to the acts committed by him. The Management has placed reliance on the rulings reported as *Pure Drinks (Private) Ltd. and Kirat Singh Maungatt and another* 1961(3) F.L.R. 46, *The Calcutta Jute Mfg. Co. Ltd. V. Calcutta Jute Mfg. Workers Union*, 1962(1) S.C.R. 483, *Tata Oil Mills Co. Ltd. V. Its Workmen*, 1964(7) S.C.R. 555 and *Bengal Bhatdee Coal Co. V. Shri Ram Prahash Singh and Ors.* 1964(1) S.C.R. page 709. All these rulings are distinguishable on facts because the provisions of Section 11-A of the Industrial Disputes Act, 1947 were not dealt with in these cases because these provisions were enacted in 1974.

22. In the ruling reported as the General Manager, Chandigarh Transport Undertaking, Chandigarh V. Ranjit Singh and another, 1982-Lab. I.C. 604, it is laid down that Industrial Tribunal could interfere with the punishment under Section 11-A of the Industrial Disputes Act, 1947, only if it was so harsh as to suggest victimisation. In the ruling reported as Sarabhai M. Chemicals (S.M. Chemicals and Electronics) Ltd. and M.S. Ajmere and another, 1980-I-L.L.J page 295, it is laid down that under Section 11-A of the Industrial Disputes Act, 1947, the Tribunal can interfere with the punishment if the same is excessive and shockingly disproportionate. In the ruling reported as The East India Hotels V. Their Workmen and Others, 1974-Lab. I.C. 532, it is laid down that the Industrial Tribunal can interfere with the punishment under Section 11-A of the Industrial Disputes Act, 1947 if the same is harsh and oppressive. In the ruling reported as M/s Godfrey Phillips India Ltd. and Manik Vasudeo and others, 1973-I-L.L.J. 278, it is laid down that Tribunal can interfere with the punishment where the same is so harsh as to suggest victimisation. In the present case, the claimant has been dismissed alongwith office bearers of the Union, but the other workers who had committed the same acts have been taken back in service by the Management because they tendered apology. It is thus apparent that the Management deemed it proper to reinstate the other workers on their tendering apology. The management had discretion while awarding the punishment, but once the Management decided to reinstate a large number of persons for these acts of misconduct, it cannot discriminate the case of the claimant merely because he was President of the Union. It cannot be held that punishment of dismissal would be fair in the case of the claimant merely because he is President of the Union and that reinstatement of the other workers was fair because they were not office bearers of the Union. In case of punishment for similar acts, same principles have to be applied. Under these circumstances, the punishment of dismissal awarded to the claimant cannot be upheld being harsh and oppressive and as such the impugned order of dismissal against the claimant is set aside. The end of justice would be met if the claimant is reinstated but he should be deprived of his full back wages for his acts of misconduct. The award is accordingly.

Dated 2nd December, 1985.

R.N. BATRA,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

Endst. No. 947, dated 4th December, 1985.

Forwarded (four copies) to the Commissioner and Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh as required under Section 15 of the Industrial Disputes Act, 1947.

R.N. BATRA,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

KULWANT SINGH,

Secretary to Government, Haryana,
Labour and Employment Department.